

1 LEON GREENBERG, ESQ.  
 A Professional Corporation  
 2 Nevada Bar No.: 8094  
 2965 South Jones Boulevard #E-4  
 3 Las Vegas, Nevada 89146  
 (702) 383-6085  
 4 (702) 385-1827(fax)

5 Mark R. Thierman, NSB 8285  
 THIERMAN LAW FIRM  
 6 7287 Lakeside Drive  
 Reno, NV 89511  
 7 Telephone (775) 284-1500

8 James P. Kemp, NSB 6375  
 Kemp & Kemp, Attorneys At Law  
 9 7435 West Azure Drive - Suite 110  
 Las Vegas, NV 89130  
 10 Telephone (702) 258-1183

11 Robin Potter, Esq.  
 111 E. Wacker Drive  
 12 Suite 2600  
 Chicago, IL 60601  
 13 Phone: (312) 861-1800  
 (Pending Pro Hac Vice Admission)  
 14 Attorneys for Plaintiffs

15 **UNITED STATES DISTRICT COURT**  
 16 **DISTRICT OF NEVADA**

17 -----X  
 JOSEPH CESARZ, QUY NGOC TANG, ) Docket: 2:13-cv-109  
 18 and all persons whose names )  
 are set forth in Exhibit A )  
 19 and individually and on behalf )  
 of all others similarly ) FIRST AMENDED COMPLAINT  
 20 situated, )  
 )  
 21 Plaintiffs, )  
 vs. )  
 22 )  
 WYNN LAS VEGAS, LLC, ANDREW )  
 23 PASCAL and STEVE WYNN, )  
 )  
 24 Defendants. )  
 ----- )

25  
 26 COMES NOW Plaintiffs, JOSEPH CESARZ, QUY NGOC TANG, and  
 27 those persons set forth in Exhibit "A", for themselves and all  
 28 others similarly situated, through their attorneys, and allege the

1 following upon personal knowledge as to themselves and their own  
2 acts, and upon information and belief as to all other matters:

3 JURISDICTION AND VENUE

4 1. This Court has jurisdiction pursuant to Section 16(b) of  
5 the Fair Labor Standards Act, 29 U.S.C. §216(b), which provides, "An  
6 action to recover the liability prescribed in either of the  
7 preceding sentences may be maintained against any employer...in any  
8 federal or state court of competent jurisdiction by any one or more  
9 employees for and on behalf of himself or themselves and other  
10 employees similarly situated." A "Consent to Joinder" form for each  
11 plaintiff has been filed with this Complaint or previously filed  
12 with the Court.

13 2. Venue is proper in the United States District Court for  
14 Nevada because Defendants conduct business in Clark County Nevada,  
15 plaintiffs reside in Clark County, Nevada, plaintiffs worked for  
16 defendants in Clark County, Nevada, and the acts complained of  
17 herein happened in or around Clark County, Nevada.

18 **BACKGROUND AND PARTIES**

19 3. Plaintiffs JOSEPH CESARZ and QUY NGOC TANG (the  
20 "individual plaintiffs"), on behalf of themselves and all others  
21 similarly situated (collectively "Plaintiffs"), by their attorneys,  
22 bring this action against defendants.

23 4. The defendants ANDREW PASCAL and STEVE WYNN are, for  
24 the purposes of the claims made herein under the Fair Labor  
25 Standards Act, 29 U.S.C. § 201 et seq. (the "FLSA"), employers of  
26 the plaintiffs as they have acted on behalf of an employer and/or  
27 acted as an employer by willfully, intentionally, knowingly or  
28 otherwise promoting, allowing, directing or otherwise creating the

1 compensation policies alleged herein that violate the FLSA, such  
2 individual defendants also exercising the power they had with the  
3 other defendant WYNN LAS VEGAS, LLC by virtue of their status as  
4 officers and/or managers and/or owners of the same to continue,  
5 create, or allow such policies to flourish and remain in existence.

6 5. WYNN LAS VEGAS, LLC is a limited liability corporation  
7 formed and existing pursuant to the laws of the State of Nevada and  
8 having its principle place of business in Clark County, Nevada.

9 **AS AND FOR CLAIM FOR RELIEF UNDER THE FAIR LABOR STANDARDS ACT**

10 6. The defendants employ the plaintiffs and hundreds of other  
11 persons as casino dealers in their casino, the Wynn Las Vegas.

12 7. Pursuant to Section 16(b) of the FLSA, the individual  
13 plaintiffs bring this Complaint as a collective action (also  
14 commonly referred to as an "opt-in" class or "an FLSA class"), on  
15 behalf of themselves and all persons similarly situated who consent  
16 to join this litigation by filing a written consent with the Court  
17 and who also agree to be represented by plaintiffs' counsel, such  
18 persons making claims under the FLSA for the period after May 5,  
19 2011, until entry of judgment after trial.

20 8. Plaintiffs are informed and believe, and based thereon  
21 allege that there are at least 500 putative FLSA class members who  
22 could "opt in" to this case, the actual number of FLSA class members  
23 is readily ascertainable by a review of the defendants' records  
24 through appropriate discovery, and the plaintiffs propose to take  
25 proceedings in this action to have such persons notified of this  
26 litigation and given an opportunity to file written consents to join  
27 this litigation.

28 9. Defendants are an enterprise engaged in commerce within

1 the meaning of the FLSA that uses and/or produces or ships goods in  
2 interstate commerce or goods that have so moved in interstate  
3 commerce and have gross revenue in excess of \$500,000 a year and/or  
4 are otherwise employers subject to the provisions of the FLSA in  
5 respect to their employment of the plaintiffs.

6 10. Pursuant to 29 U.S.C. § 206 and § 207 the defendants are  
7 charged with an obligation to pay the minimum wage and overtime  
8 wages required by the FLSA to the plaintiffs.

9 11. Defendants have failed and refused to make the minimum  
10 wage and/or overtime payments required by the FLSA to the plaintiffs  
11 or otherwise comply with the requirements of the FLSA in respect to  
12 their employment of the plaintiffs because, since May 5, 2011, they  
13 have violated 29 U.S.C. § 203(m) and 29 U.S.C. § 206 of the FLSA and  
14 the implementing regulations thereto set forth in 29 CFR 531.52 and  
15 29 CFR 531.54, to wit, they have failed to allow the plaintiffs to  
16 retain for themselves, or retain for themselves through a tip pool  
17 structured in compliance with the provisions of the FLSA and  
18 otherwise authorized by the FLSA, all of the tips they have received  
19 from customers during the course of their employment by the  
20 defendants.

21 12. Defendants have required the plaintiffs, as a condition of  
22 their employment, to pool and share their tips with other employees  
23 who do not customarily and regularly receive tips, such tip pool  
24 and/or tip sharing not being authorized under the FLSA and its  
25 relevant implementing regulations and/or have required the  
26 plaintiffs to give a portion of their tips to other employees of the  
27 defendants in a manner that violates the FLSA.

28 13. Defendants, by implementing the policies alleged in

1 paragraph 12, have effectively failed to pay any wages whatsoever to  
2 the plaintiffs, in that defendants recoup from the plaintiffs,  
3 through the taking of a portion of the plaintiffs' tips, an amount  
4 far in excess of the amount it nominally pays to the plaintiffs from  
5 the defendants' own funds, such actions by the defendants violating  
6 the purpose and intent of the FLSA which is to make all employers  
7 pay FLSA required minimum wages and overtime wages and all other  
8 wages solely from the resources of the employer and not by  
9 appropriating employee tips to make such wage payments, the FLSA  
10 also preventing an employer from engaging in such an appropriation  
11 by using a tip pool, such as the one used by defendants, to  
12 compensate employees who do not regularly and customarily receive  
13 tips with a portion of the tips received by other employees who do  
14 regularly and customarily receive tips.

15 14. Defendants' aforesaid violations of the FLSA were  
16 intentional, willful and knowing. Such willful violations are  
17 established by, among other things, a history of prior and existing  
18 litigation against defendants over the tip taking and pooling  
19 policies at issue and the awareness of defendants' counsel of the  
20 regulations issued by the United States Department of Labor that  
21 were implemented and effective as of May 5, 2011 and that govern the  
22 claims made herein.

23 15. As a result of the foregoing the plaintiffs, on behalf of  
24 themselves and all other persons who join in this action by filing  
25 written consents with the Court and who agree to be represented by  
26 plaintiffs' counsel, seek to collect their full damages for the  
27 defendants' aforesaid violations of the FLSA that have occurred on  
28 and after May 5, 2011, to wit, the value of the tips taken from them

1 by the defendants and given by the defendants to other employees of  
2 the defendants who do not customarily and regularly receive tips, or  
3 given to other employees whom the plaintiffs cannot be required to  
4 share their tips with under the FLSA, or whatever other measure of  
5 actual damages they are due from defendants' aforesaid violations of  
6 the FLSA taking place on and after May 5, 2011, along with an equal  
7 amount of liquidated damages as provided for under 29 U.S.C. §  
8 216(b), together with attorneys' fees, costs, interest and such  
9 other relief as the Court may deem proper.

10  
11 WHEREFORE, plaintiffs demand the relief on each cause of action  
12 as alleged aforesaid, together with costs, interest, attorney's fees  
13 and such other relief as the Court deems just.

14  
15 Plaintiffs demand a trial by jury on all issues so triable.

16 Dated this 30<sup>TH</sup> day of April, 2013

17 Leon Greenberg Professional Corporation  
18

19 */s/Leon Greenberg*

20 By: \_\_\_\_\_

21 LEON GREENBERG, Esq.

22 Nevada Bar No.: 8094

23 2965 South Jones Boulevard - Suite E4

24 Las Vegas, Nevada 89146

25 (702) 383-6085

26 Attorney for Plaintiff  
27  
28